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67,167-009; 350-3315-U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANTS: Ebert
SERIAL NO.: 10/689,230
FILED: 10/20/2003
GROUP ART: 3676
EXAMINER: Eştremsky, Gary Wayne
FOR: Door Lever Construction With Fragile Handle

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

REQUEST FOR REHEARING

Dear Sir:

Appellant requests reconsideration of the Decision on Appeal decided 6 June 2007. Appellant believes there are points that have been overlooked in the Decision on Appeal. Appellant respectfully requests reconsideration of these points.

ARGUMENT

Claims 1-11 were appealed, claims 1 and 8 are independent. The Decision on Appeal reversed the Examiner's rejections of claims 1 and 5 under 35 U.S.C. §102(b) and claims 2-4 and 6-11 under 35 U.S.C. §103(a). The Decision entered a new ground of rejection with respect to claim 1 under §103(a), but expressed no view as to the patentability of remaining claims 2-4 and 6-11. The new ground of rejection relies on the Tokarz patent, the same reference relied upon by the Examiner in the previous rejection of claim 1 under §102(b).

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Respectfully, Appellant believes that the Board overlooked an opportunity to advance the application by expressing no view as to the patentability of claims 2-4 and 6-11. Appellant asks that the Board issue a new Decision on Appeal addressing these claims.

The Decision appealed the Examiner's rejection of claims 1 and 5 as anticipated by the Tokarz patent. Although the Tokarz patent neither expressly describes or discloses that a shank made of metal, the Examiner relied upon inherency as teaching the missing limitation. The Board reversed this rejection, and issued a new ground of rejection stating that claim 1 was instead obvious in view of the Tokarz patent. The Board admits that the Tokarz patent is silent as to the material of the shank or the base portion, but states that the use of metals for the base and other parts of the faucet is ubiquitous. Further, the Board believes that one having ordinary skill in the art would recognize that the shank portion is likely to be "a metal such as chrome plated brass" and that it "would have been obvious to use the typical metal base with any of the handle materials described by Tokarz." The Board only applies the new ground of rejection to claim 1.

Appellant respectfully requests that the Board address the Examiner's rejection of the remaining claims 2-4 and 6-11. Since the board only changes how the same Tokarz patent is applied, certainly the Examiner will apply the same rejections as before to claims 2-4 and 6-11. Claims 2-4 and 6-11 still remain improperly rejected for the reasons set forth in Appellant's initial brief.

As an example, each of claims 3 and 7, claim 4, and claims 10 and 11 were singled out as being allowable for separate reasons within the initial Appeal Brief. The Board's new rejection merely changes how the Tokarz reference is relied upon to reject claim 1. However, the Tokarz reference as used in each of these additional rejections of dependent claims would be no different for the particular rejection. The Examiner held the reference inherently met claim 1, and the Board holds that it would appear to render claim 1 obvious.

Simply, Tokarz utilized as the primary reference in any one of the rejections of the dependent claims would thus be effectively the same. The arguments are the same, and the Examiner's rejection will almost certainly be the same. For this reason, appellant asks the Board render some decision on each of the three separate rejections made over the Tokarz reference combined with the secondary reference.

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CONCLUSION

Based on the above remarks, Appellant believes that the Board overlooked an opportunity to advance the application. Appellant hereby respectfully requests reconsideration of the Decision on Appeal and specifically the choice by the Board not to address claims 2-4 and 6-11.

For the above reasons, all of the pending claims should be allowed. It is believed that no fees are due, however if any fees are due please charge to Deposit Account No. 50-1482.

Respectfully submitted,

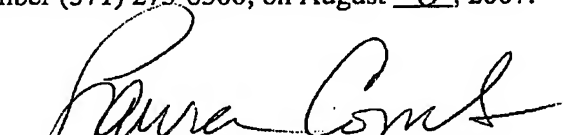


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Dated: August 6, 2007

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, fax number (571) 273-8300, on August 6, 2007.


Laura Combs